

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

A.P.G., an infant,
by his mother and next friend,
BRITTANY M. JONES

Plaintiff,

v.

FISHER-PRICE, INC.; MATTEL, INC.;
WAL-MART.COM USA, LLC;
WALMART INC.; WAL-MART
ASSOCIATES, INC.; AND WAL-MART
STORES EAST, LP

Defendants.

Case No. **3:22-cv-00112-DJN**

UNOPPOSED MOTION FOR APPROVAL OF SETTLEMENT AND RELEASE

Plaintiff A.P.G., an infant, by his mother and next friend, Brittany Jones (“Plaintiff”), by and through the undersigned counsel, hereby states as follows for Plaintiff’s Unopposed Motion for Approval of Settlement and Release:

1. This matter arises from an incident occurring on May 12, 2019, wherein Plaintiff alleges that A.P.G. was injured when his Ultra-Lite Day & Night Play Yard, developed, marketed, and/or sold by the Defendants, collapsed. Plaintiff has alleged throughout the course of this litigation that Defendants were liable pursuant to various theories of liability, including that the product at issue contained a design defect. Defendants maintain that the subject product did not contain any design defects and did not cause A.P.G.’s injuries.

2. The parties have agreed to settle this matter for \$3,500,000.00, as well as various other terms of settlement as set forth in the parties’ Memorandum of Understanding Regarding Settlement executed on May 25, 2023.

3. Plaintiff is diligently working to obtain final cost information from vendors (including court reporting services, expert witness fees, and e-discovery platform costs) and liens and will need to amend this Motion once final invoices are received. The anticipated disbursement of the settlement is set forth below, with the exception of the allocation of Plaintiff's attorney's fees which the Farrin Attorneys (Plaintiff's counsel) wish to be heard on:

- a. \$1,376,446.13 to be disbursed for the sole and exclusive benefit of APG by (1) creating and making an initial deposit into a Special Needs Trust and (2) funding the purchase by defendants or their insurers of an Internal Revenue Code Section 130(c)-qualified structured settlement annuity which annuity shall make future periodic payments to the Special Needs Trust created for the sole and exclusive benefit of APG.
- b. \$654,060.18 for litigation costs and expenses advanced in pursuit of A.P.G.'s claim;
- c. \$69,493.69 for the Virginia Department of Medical Assistance in satisfaction of its state Medicaid lien; and
- d. \$1,400,000.00 in attorney's fees (40% of the total recovery by client's fee agreement with the Law Offices of James Scott Farrin) to be divided among Plaintiff's Counsel as determined by the Court.

4. Plaintiff is working with licensed structured settlement broker, Edward C. LeCarpentier, JD, CSSC of the North Carolina State Bar, to structure the benefits for A.P.G.'s special needs trust. Mr. LeCarpentier has been involved and consulting Plaintiff's counsel on this case since July 2022. Mr. LeCarpentier has been a Certified Structured Settlement Consultant since 2008, is president of Settlement Planning Services, LLC, and served as president of the National

Structured Settlements Trade Association (NSSTA) in the 2022-2023 term. His CV is attached as Exhibit 1 and incorporated herein by reference. To the extent a structured settlement is settled on by the parties, Plaintiff agrees to use one of the following life insurers to fund the structure: USAA Life Ins. Co., New York Life Ins. Co, Metropolitan Life Ins. Co., Prudential Ins. Co. of America, Pacific Life Ins. Co., and/or United of Omaha Life Ins. Co., each of which have ratings of A++/A+ by A.M. Best Company Rating and AA+/AA-/A+ by Standard & Poor's Financial Strength Rating. The ratings for these companies are attached as Exhibit 2 and incorporated herein by reference. Plaintiff is in the process of interviewing and hiring a Virginia trust attorney to create the special needs trust document and is identifying an appropriate professional trustee to manage the trust for A.P.G.'s benefit. Counsel for Plaintiff is working diligently with Mr. LeCarpentier to identify an annuity schedule to maximize the benefits for A.P.G.'s immediate and future needs.

5. Plaintiff will make an itemization of all costs available to the Court for review. Plaintiff requests that these costs remain sealed and *ex parte* because the costs reveal attorney work product and trial strategy.

6. The Declarations of Coleman M. Cowan and Kaitlyn E. Fudge are attached as Exhibits 3 and 4 in support of the attorney's fees requested for approval in Paragraph 3.

7. The Virginia Department of Medical Assistance (DMAS) originally claimed a lien of \$318,302.65 for services provided to A.P.G. as a result of the injury he sustained on May 12, 2019. After negotiations, the Virginia Office of the Attorney General agreed to reduce the lien to \$69,493.69.

8. Plaintiff attaches a Brief in Support of this Motion hereto, and move herein for the Court to enter the proposed Order attached hereto, approving the settlement and relieving the

Defendants herein from any further liability upon completion of their obligations pursuant to the settlement agreement.

9. Plaintiff submits that the sums proposed in this settlement are fair and reasonable under the circumstances of this case, that the proper authority has been granted to settle this case on said terms, and represent that it is in the best interest of their respective clients to have the settlement approved.

10. The parties have met and conferred concerning Plaintiff's motion and Defendants do not oppose this motion.

11. The parties held a conference before this Court and request a hearing on August 15, 2023, at 2 PM.

WHEREFORE, Plaintiff requests that the Court grant their Motion for Approval of Settlement and Release after a hearing on August 15 at 2 PM, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted this, the 8th day of June, 2023.

s/ Michael Krol
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Counsel for Plaintiff

/s/ Kaitlyn E. Fudge

Coleman M. Cowan (admitted *pro hac vice*)

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing **Unopposed Motion for Approval of Settlement and Release** was filed by counsel for the Plaintiff and served on the following parties via CM/ECF notification:

<p>Lynne Jones Blain (VSB#23719) Laura Lee Miller Harman Claytor Corrigan & Wellman, P.C. 4951 Lake Brook Drive, Suite 100 Glen Allen, VA 23060 Tel.: (804) 762-8026 Fax.: (804) 212-0857 Email: lblain@hccw.com Email: lmiller@hccw.com</p> <p><i>Counsel for Defendants</i></p>	<p>Lori G. Cohen (<i>pro hac vice</i>) Brandon D. Cox (<i>pro hac vice</i>) Bardia Sanjabi (<i>pro hac vice</i>) Allison Ng (<i>pro hac vice</i>) GREENBERG TRAURIG, LLP The Terminus 3333 Piedmont Road, N.E. Suite 2500 Atlanta, GA 30305 Tel.: (678) 553-2100 Fax: (678) 553-2212 Email: cohenl@gtlaw.com Email: coxsb@gtlaw.com Email: sanjabib@gtlaw.com Email: nga@gtlaw.com</p> <p><i>Counsel for Defendants</i></p>
<p>Mary-Olga Lovett (<i>pro hac vice forthcoming</i>) GREENBERG TRAURIG, LLP 1000 Louisiana Street, Suite 1700 Houston, TX 77002 Telephone: (713) 374-3541 Facsimile: (713) 754-7541 Email: lovettm@gtlaw.com</p> <p><i>Counsel for Defendants</i></p>	
<p>Stephen T. Fowler GREENBERG TRAURIG, LLP 2101 L. Street N.W., Suite 1000 Washington, D.C. 20037 Telephone: (202) 530-8587 Fax: (202) 261-0462 Email: fowlerst@gtlaw.com</p> <p><i>Counsel for Defendants</i></p>	<p>Anna Yeung (<i>pro hac vice</i>) GREENBERG TRAURIG, LLP 101 Second Street, Suite 2200 San Francisco, CA 94105-3668 Telephone: (415) 590-5111 Fax: (415) 707-2010 Email: yeunga@gtlaw.com</p> <p><i>Counsel for Defendants</i></p>

This, the 8th day of June, 2023.

/s/ Michael Krol

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